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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIK CHARLES EVANS,

Defendant and Appellant.

H033881

(Santa Cruz County
Super. Ct. No. WF00266)

After his motion to suppress evidence (Pen. Code, § 1538.5)¹ was denied, defendant Erik Charles Evans entered into a negotiated plea agreement whereby he pleaded guilty to felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and misdemeanor possession of a deadly weapon (§ 12020, subd. (a)(1)), and the trial court sentenced him to 45 days in jail with no probation. On appeal, defendant asks this court to review the sealed portions of the affidavit underlying the search warrant authorizing the search of his residence to determine whether the affidavit was properly sealed and whether the warrant properly issued. We have done so and, for the reasons stated below, we will affirm the judgment.

¹ Further unspecified statutory references are to the Penal Code.

BACKGROUND

Defendant was charged by complaint filed April 28, 2008, with felony possession of methamphetamine (Health & Saf. Code, § 1377, subd. (a); count 1), and misdemeanor possession of a deadly weapon, a “shuriken” or throwing star (§ 12022, subd. (a)(1); count 2). On June 16, 2008, he filed a motion to suppress “all evidence and items seen inside and/or taken from” his residence “during the search executed on April 26, 2008,” “on the ground that the ‘warrant’ ostensibly authorizing the search was not supported by provable, reviewable probable cause.”

On July 31, 2008, defendant filed a motion to quash the search warrant, contending “i) there was not probable cause for the issuance of the search warrant and the warrant was insufficient on its face, ii) the sealing of the affidavit violates federal and state constitutional standards, and iii) even if the court finds the warrant was properly sealed, the defendant is entitled to an in camera review of the sealed evidence.” Attached to the motion was a copy of the unsealed portion of Watsonville Police Officer Morgan Chappell’s affidavit in support of the search warrant. The unsealed portion of the affidavit includes a statement of the officer’s training, experience, and expertise; a description of defendant and his place of residence; a request to search defendant’s residence and any vehicles under his dominion or control; and a request to seize methamphetamine, drug paraphernalia, and evidence of sales found in the places searched.

The affidavit further states that “[i]f any of the information within the requested sealed portion of the affidavit is made public, it will reveal, or tend to reveal, the identity of any confidential informant(s), impair further related investigation, and endanger the life of the confidential informant(s).” Therefore, “AFFIANT REQUESTS that the following portion of the search warrant affidavit be ordered sealed by the magistrate in order to implement the privilege under Evidence Code sections 1040 to 1042 and to protect the identity of any confidential informant(s) and/or official information.”

The district attorney filed opposition to defendant's motion. At a hearing on August 15, 2008, before Judge John Salazar, the court informed the parties that it would be "taking the sealed portion of the search warrant into chambers and opening that up and making a record of what's in here of my finding." After describing the sealed portion of the search warrant for the record in camera, the court stated, "the first page of the sealed portion of the affidavit should be released to the defense[]" The clerk's minutes state that "copies of 2 pages of search warrant [were] handed to DA and Defense Attorney."

On October 17, 2008, defendant waived preliminary examination, and the parties stipulated that the complaint would act as the information. On November 19, 2008, defendant renewed his motion to quash the search warrant and to suppress evidence. Attached to the motion was a copy of both the previously unsealed and the two-page court-ordered unsealed portions of the affidavit in support of the search warrant. The two-page court-ordered unsealed portion of the affidavit states that the confidential informant (CI) was untested, had never assisted law enforcement with information regarding illegal activity, presumably has prior felony convictions, and presumably is assisting law enforcement for case consideration. The affiant met with the CI at the Watsonville police station within the 10 days prior to the preparation of the affidavit. The CI stated at that time that he/she knows a person named "Erik," who goes by the moniker of "Dragon," and who sells methamphetamine in Watsonville. The CI described "Erik" and gave his address. The affiant had the moniker "Dragon" run through jail records, and learned that defendant was associated with that name. The address on defendant's driver's license is the same address the CI gave as "Dragon's" address. The affiant showed the CI defendant's driver's license photo and the CI stated that this was a picture of the person he/she knows as "Dragon" who has sold the CI methamphetamine.

The prosecutor filed opposition to defendant's renewed motion on December 3, 2008. At a hearing on December 10, 2008, before Judge Salazar, the court stated that it

had “again reviewed the sealed portion of the search warrant . . . , and would again deny the motion to quash or traverse the search warrant, finding sufficient probable cause for issuance of that.”

On January 15, 2009, defendant entered into a negotiated plea agreement whereby he pleaded guilty to both count 1 (felony possession of methamphetamine, Health & Saf. Code, § 11377, subd. (a)), and count 2 (misdemeanor possession of a throwing star, § 12020, subd. (a)(1)), on condition that the court impose “a 45-day jail sentence without probation.” The court accepted the plea and imposed the 45-day jail sentence without probation, and with four days custody credits.

Defendant filed a timely notice of appeal. (See Cal. Rules of Court, rule 8.304(B)(4)(A).)

DISCUSSION

Section 1534, subdivision (a), provides that the contents of a search warrant, including the supporting affidavit setting forth the facts establishing probable cause for the search, become a public record once the warrant is executed and returned.² However, in *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*), the court held that if certain procedures are followed to preserve the defendant’s right to challenge the validity of a search warrant, a major portion or all of the search warrant affidavit may be sealed to protect the identify of a confidential informant. (*Id.* at pp. 955, 971-975.) On a properly noticed motion by a defendant to quash or traverse the warrant, the trial court must conduct an in camera hearing after allowing the defendant to submit written questions to be asked of

² Section 1534, subd. (a) states in relevant part: “A search warrant shall be executed and returned within 10 days after date of issuance. . . . The documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.”

any witness called to testify at the hearing. (*Id.* at p. 973.) At the hearing, the court is to determine (1) whether the affidavit has been properly sealed (*id.* at pp. 972-973), and (2) whether, under the totality of the circumstances presented in the entire affidavit and any testimony presented to the court, there was a fair probability that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. (*Id.* at p. 975.) “In all instances, a sealed transcript of the in camera proceedings, and any other sealed or excised materials, should be retained in the record along with the public portions of the search warrant application for possible appellate review. [Citations.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.)

Defendant concedes that the trial court properly followed the procedures outlined in *Hobbs*. At the hearing on August 15, 2008, Judge Salazar ordered two pages of the sealed affidavit unsealed and released to the parties. At both the August 15 and December 10, 2008 hearings, Judge Salazar found that the remaining portion of the sealed affidavit properly remained sealed and that probable cause supported issuance of the search warrant. Defendant requests that we review the sealed portion of the affidavit to determine whether it remains properly sealed and whether the search warrant properly issued.

We have independently reviewed the appellate record, including the transcript of the in camera hearing and the sealed and unsealed portions of the search warrant affidavit. We agree with the trial court that if the information in the sealed document were disclosed, the identity of the confidential informant might be revealed. Thus, the sealed portion of the affidavit was properly ordered to remain sealed. (*Hobbs, supra*, 7 Cal.4th at pp. 972-973.) In addition, we find that, under the totality of the circumstances presented in the search warrant affidavit, there was a fair probability that contraband or evidence of a crime would be found in defendant’s residence. (*Id.* at p. 975.) Accordingly, we conclude that no Fourth Amendment or due process violation

occurred. (See *People v. Bradford* (1997) 15 Cal.4th 1229, 1291; *Illinois v. Gates* (1983) 462 U.S. 213, 238.)

DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MCADAMS, J.

DUFFY, J.